

Serial No. 10/633,088  
Attorney Docket No. 35165552.13

**REMARKS**

Claims 1-29 are pending in the above-identified application. In the present office action, all of the pending claims have been rejected for the following reasons:

- claim 14 has been rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter, and for the lack of antecedent basis for "the inner portions";
- claims 10 and 15 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S.P.N. 2,104,714 ("Moore");
- claims 1-9 have been rejected under 35 U.S.C. § 103(a) as being obvious over U.S.P.N. 6,292,956 ("Kayahara");
- claims 11-14 have been rejected under 35 U.S.C. § 103(a) as being obvious over Moore;
- claims 16-29 have been rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Moore with Kayahara.

These rejections are traversed for the following reasons.

**I. Rejection of Claim 14 Under 35 U.S.C. § 112**

Claim 14 is rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the invention. Specifically, the Office Action states that the language "the inner portions" is confusing and lacks antecedent basis. Applicants have amended claim 14 to further clarify which structure constitutes the claimed "the inner portions" and to provide antecedent basis. Specifically, "the inner portions" has been amended to "the inner rim." Although the Office Action did not address the same issue for Claim 27, it has also been amended to more clearly define the claimed subject matter and to overcome the lack of antecedent basis.

Based on these amendments and arguments, Applicants submit that claims 14 and 27 are now in condition for allowance. Applicants therefore request that the rejection of these claims be reconsidered and withdrawn.

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## II. Claims 10 and 15 are Not Anticipated by Moore

Claims 10 and 15 are rejected under 35 U.S.C. §102(b) as being anticipated by Moore. Applicants respectfully traverse these rejections because all of the limitations of amended claim 10 are not disclosed or suggested by Moore.

Claim 10 has been amended to clarify that the vertically extending rigid members located between the outer and inner rims of the left side and the right side of the toilet seat are integral to the seat. Moore does not teach this limitation. To the contrary, Moore teaches anchoring clips that are secured to the seat sections with freedom for transverse adjustments. See Moore, col. 2, lns. 32-34. The anchoring clips of Moore allow both independent lateral and pivotal movements so that the seat of Moore can be independently raised and moved from side to side. See Moore, col. 2-3, lns. 55- 3. The seat of claim 10, on the other hand, is not movable or adjustable. The vertically extending rigid members are provided to prevent movement of the seat and to provide stability to the seat rather than to allow movement of the seat as in Moore. Accordingly, because Moore does not teach all the limitations of claim 10, the rejection of claim 10 under 35 U.S.C. § 102(b) is traversed. Since claim 15 depends from claim 10, claim 15 distinguishes from Moore for at least the same reasons as claim 10. Applicants therefore request that the rejection of these claims be reconsidered and withdrawn.

## III. Claims 1-9 are not Obvious in View of Kayahara

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Kayahara. The Office Action states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ any the dimensions of the base and bowl portions as claimed. This rejection is traversed because Kayahara does not disclose or suggest all of the limitations of amended claims 1-9.

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To properly reject a claim under 35 U.S.C. §103(a), the Manual of Patent Examining Procedure imposes a burden on the Patent Office to establish a prima facie case of obviousness:

The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of non-obviousness.

M.P.E.P § 2142. There are three basic criteria to a case of prima facie obviousness: i) there must be some suggestion or motivation to modify the references or combine the reference teachings; ii) there must be reasonable expectation of success in modifying or combining the references; and iii) the prior art references must disclose or suggest all of the limitations of the claimed invention. *Id.* The Office Action has failed to establish a prima facie case of obviousness because all of the limitations of amended claim 1 are not disclosed or suggested by Kayahara.

Claim 1 has been amended to point out that the reinforced portion of the base portion *vertically* extends from the bottom of the base portion to the bowl portion. One function served by this feature is to alleviate the stress imposed on the side of the bowl when it is used by an obese person. Kayahara teaches away from this. Specifically, the reinforcements of Kayahara are not adjacent to the base and bowl portion as taught by claim 1. Rather, the reinforcements in Kayahara are adjacent to the tank portion at the rear of the toilet rather than the bowl portion as taught in claim 1. *See Kayahara, Fig. 18.* Therefore, the reinforcements taught by Kayahara do not eliminate the side stress placed on the bowl and base portions of the toilet when in use, which is provided by the claimed invention. Further, the position of the reinforcements in claim 1 are in the middle of the bowl apparatus where the most stress is present when in use. On the other hand, Kayahara teaches fold back portions located on the rear portion of the main body of the toilet, which do not prevent stress as with the reinforcements in claim 1. *See Kayahara, col. 5, lns. 10-11.* Kayahara therefore fails to disclose or suggest all of the limitations of claim 1.

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Since Kayahara does not disclose or suggest all of the limitations of amended claim 1, Applicants respectfully submit that this rejection has been traversed. Since claims 3-9 depend from claim 1, Kayahara also fails to teach all of the limitations of these claims for the same reasons as claim 1. Applicants therefore request that the rejection of claims 1 and 3-9 be reconsidered and withdrawn.

**IV. Claims 11-14 are not Obvious in View of Moore**

The rejection of claims 11-14 as being obvious in view of Moore is traversed because Moore fails to teach all of the limitations of these claims. All of claims 11-14 depend from claim 10, which has been distinguished from Moore. See discussion *supra*. Claims 11-14 distinguish from Moore for at least these same reasons. Since Moore fails to disclose or suggest all of the limitations of claims 11-14, Applicants respectfully submit that this rejection has been traversed. Applicants therefore request that the rejection of claims 11-14 be reconsidered and withdrawn.

**V. Claims 16-29 are not Obvious in View of the Combination of Moore with Kayahara**

The Office Action states that claims 16-29 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Moore with Kayahara. The rejection of claims 16-29 is traversed since the combination of Moore with Kayahara does not teach all of the limitations of claims 16-29.

Claim 16 has been amended to clarify that the vertically extending rigid members located between the outer and inner rims of the left side and the right side of the toilet seat are integral to the seat. As previously stated, neither Moore nor Kayahara teaches this limitation. Claim 1 has further been amended to point out that the reinforced portion of the base portion vertically extends from the bottom of the base portion to the bowl portion. This limitation is not disclosed or suggested by the cited references. Since the combination of Moore with Kayahara does not

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teach all of the limitations of claim 16, Applicants respectfully submit that this rejection has been traversed. Applicants therefore request that the rejection of claim 16 be reconsidered and withdrawn.

All of claims 18-29 depend from claim 16, which has been distinguished from Moore in view of Kayahara. Claims 18-29 distinguish from Moore in view of Kayahara for at least these same reasons. Since the combination of Moore with Kayahara fails to teach all of the limitations of claims 18-29, Applicants respectfully submit that this rejection has been traversed. Applicants therefore request that the rejection of claims 18-29 be reconsidered and withdrawn.

#### **VI. Commercial Success of Claimed Invention**

Applicants respectfully submit that the claimed invention distinguishes from the prior art because of the commercial success of the claimed invention. Affidavits or declarations containing evidence of commercial success must be considered by the examiner in determining the issue of obviousness under 35 U.S.C. § 103. *See* M.P.E.P. § 716.01(a). As indicia of obviousness or unobviousness, evidence rising out of "secondary considerations," such as commercial success, may have relevancy. *See Graham v. John Deere Co.*, 383 U.S. 1, 148 (1966).

As evidence of commercial success, Applicants recently received top honors in bath products at the 2004 New Product Pavillion for a product representing one embodiment of the claimed invention. More than 50,000 people in the field of kitchen and bath products, including kitchen and bath designers, dealers, interior designers, architects, builders and related professionals, attended the 2004 K/BIS trade show. *See* Declaration under 37 C.F.R. §1.132, ¶ 3. A prize was awarded based on a vote of all trade show attendees for the company or product that has improved the kitchen and bath market through outstanding innovation in product development. *See* Declaration under 37 C.F.R. §1.132, ¶ 4. More than 100 products were

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considered for the award of most innovative product at the 2004 K/BIS trade show. See Declaration under 37 C.F.R. §1.132, ¶ 5.

The Great John toilet, which is one embodiment of the claimed invention, was found to be the overwhelming favorite of the innovative products that were considered for the top honors at the trade show. See Declaration under 37 C.F.R. §1.132, ¶ 6. The attached letter received from *KBB Magazine* was in response to the top honors prize awarded for the claimed invention at the 2004 K/BIS trade show in McCormick Place, Chicago, Illinois. See Declaration under 37 C.F.R. §1.132, Ex. A.

Applicants respectfully submit that the nexus between the commercial success and the claimed subject matter has been established by the attached affidavit. Applicants therefore request that the evidence of commercial success of the claimed subject matter be considered as further evidence of nonobviousness and that the rejection of claims 1-9, 11-14 and 16-29 be reconsidered and withdrawn.

## VII. Conclusion

Applicants respectfully submit that the pending claims 1-29 are now in condition for allowance. Enclosed are the fees to cover the 1-month extension to file this Amendment and Response to Office Action. If, however, it is determined that additional fees are due, the Director is authorized to charge those fees to our Deposit Account No. 13-0480, referencing Attorney Docket Number 35165552.13.

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Respectfully submitted,

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